Filed 11/18/03 In re Juan B. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re JUAN B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JUAN B., Defendant and Appellant.	E033538 (Super.Ct.No. J185659) **OPINION**

APPEAL from the Superior Court of San Bernardino County. Douglas Gericke, Judge. Affirmed.

Barry O. Bernstein and Karyn H. Bucur for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, and Gary W. Schons, Senior Assistant Attorney General, for Plaintiff and Respondent.

Minor admitted that he committed an assault with a deadly weapon, to wit, a knife, (Pen. Code, § 245, subd. (a)(1)), as a felony; in exchange, the attempted murder (Pen. Code, §§ 664/187) allegation was dismissed. Following a contested dispositional hearing, minor was declared a ward of the court and committed to the California Youth Authority (CYA) for a maximum period of four years eight months. Minor's sole contention on appeal is that the juvenile court abused its discretion in committing him to CYA. We find no abuse and will affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND[1]

On January 11, 2001, minor was initially declared a ward of the court and placed on formal probation, following a sustained allegation of weapons on school grounds (Pen. Code, § 626.10, subd. (a)). He initially had difficulty adjusting to probation; he was returned to court on two occasions for violating terms of his probation and ordered to serve periods of custody time in juvenile hall. Minor was eventually discharged as a ward of the court on May 28, 2002.

About seven months later, on December 1, 2002, while the victim and an uninvolved party were having a verbal argument over the neighbors making noise, minor approached the victim from behind with a large military-style knife and stabbed him one time in the upper left back. Minor then fled the scene. He was subsequently apprehended by the San Bernardino Police Department.

On December 9, 2002, minor and a cohort were hiding behind a group of trees and bushes at a park and shooting a BB gun at anything that moved. Two individuals were shot. When a police officer responded to the scene, minor ran from the officer and into his residence. The officer gave chase, detained minor, and found a backpack with a black and silver BB handgun. Minor was later identified by one of the victims to the shooting during an in-field lineup. Minor claimed that he was just shooting at streetlights and birds and that maybe one of the bullets fell and hit the victim.

On December 11, 2002, a Welfare and Institutions Code section 602[2] petition was filed, alleging that minor committed two counts of assault with a deadly weapon, to wit, a BB gun (Pen. Code, § 245, subd. (a)(1)).

On January 9, 2003, following a pretrial hearing, the juvenile court granted the People's motion to reduce both counts to misdemeanors, and minor admitted the allegations as to both counts. Minor was then continued detained in his grandmother's home, and the house arrest program was ordered terminated.

On January 17, 2003, a subsequent section 602 petition was filed, alleging that minor committed an attempted murder (Pen. Code, §§ 664/187) (count 1), a felony, and an assault with a deadly weapon, to wit, a knife (Pen. Code, § 245, subd. (a)(1)) (count

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[footnote continued from previous page]

[1] The factual background is taken from the probation officer's report.

[2] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

2), a felony. On February 4, 2003, minor admitted the allegations as to count 2, and count 1 was dismissed.

On March 7, 2003, following a contested dispositional hearing, minor was declared a ward of the court and committed to CYA. On March 17, the juvenile court denied minor's request to reconsider the CYA commitment and to recall the commitment.

II

DISCUSSION

Minor contends the juvenile court abused its discretion in committing him to CYA without adequately considering the benefits of CYA on minor and less restrictive alternatives. We disagree. The record clearly demonstrates the court considered the benefits of CYA on minor and the alternatives, but rejected the alternatives as inappropriate before arriving at the decision to commit minor to CYA.

We review a placement decision only for abuse of discretion. (*In re Asean D.* (1993) 14 Cal.App.4th 467, 473.) The court will indulge all reasonable inferences to support the decision of the juvenile court. (*Ibid*.) An appellate court will not lightly substitute its decision for that of the juvenile court and the decision of the court will not be disturbed unless unsupported by substantial evidence. (*In re Eugene R.* (1980) 107 Cal.App.3d 605, 617.) The juvenile court may consider a commitment to CYA without previous resort to less restrictive placements. (*In re Asean D.*, at p. 473.) Lastly, "the 1984 amendments to the juvenile court law reflected an increased emphasis on punishment as a tool of rehabilitation, and a concern for the safety of the public." (*Ibid*.)

Since retribution must not be the sole reason for punishment, there must be evidence demonstrating probable benefit to the minor and the inappropriateness or ineffectiveness of the less restrictive alternatives. (*In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396; *In re Teofilio A.* (1989) 210 Cal.App.3d 571, 576.) Evidence relevant to the disposition includes, but is not limited to, the age of the minor, the circumstances and gravity of the offenses committed, and the minor's previous delinquent history. (§ 725.5.)

After a review of the entire record, we conclude there is substantial evidence here to support the commitment to CYA. Minor, who is 16 years old, is in serious need of educational services or vocational training. Minor is also in need of substance abuse counseling as he has admitted to smoking marijuana and drinking alcohol. In addition, based on his current and past offenses and his admissions, minor is in dire need of gang awareness counseling, anger management counseling, and victim awareness counseling. The record sufficiently supports the court's determination that minor would benefit by the reformatory, educational, disciplinary or other treatment provided by CYA.

Minor's principal argument against the appropriateness of his CYA commitment is that the juvenile court failed to fully explore less restrictive alternatives. Contrary to minor's assertions, the record here demonstrates that the court considered less restrictive alternatives but rejected them as inappropriate.

Minor has a history of serious criminal offenses and a history of failure to cooperate with the court, the probation department, and his grandmother. In an effort to rehabilitate minor, the court has given minor an opportunity to mend his delinquent

behavior on probation and juvenile hall. The court considered placement and minor's performance on probation but found it inappropriate under the circumstances of this case. Minor's age, the circumstances and gravity of the current offenses, minor's previous delinquent history, the benefits of CYA on minor, and the safety of the community all establish that minor requires commitment in a more structured and secure environment than placement can offer. The court properly found a less restrictive alternative to be unfeasible.

The record need only show, as it does here, probable benefit to the minor from commitment to CYA and less restrictive alternatives were considered and rejected. (*In re George M.* (1993) 14 Cal.App.4th 376, 379; *In re Teofilio A.*, *supra*, 210 Cal.App.3d at p. 576.) The court articulated reasonable concerns for the community and minor's rehabilitation, concerns that can only be addressed by CYA given minor's history and current offenses. We thus conclude the juvenile court did not abuse its discretion by committing minor to CYA.

Minor further contends the juvenile court erred in denying his motion to reconsider the commitment to CYA in light of his request to submit a psychiatric evaluation to the court. Minor's reliance on *In re Darryl T.* (1978) 81 Cal.App.3d 874 to support this position is misplaced. In that case, the appellate court reversed the juvenile court referee's commitment of the minor to CYA because the referee "used inappropriate criteria in committing the minor to the California Youth Authority." (*Id*. at p. 882-883.) In contrast, the juvenile court here examined all of the factors required under the juvenile

court law, and there is no evidence the court considered inappropriate criteria before committing minor to CYA.

Moreover, a trial court is not bound by the recommendations put forth in a psychological assessment or a probation report. (See, e.g., *People v. Municipal Court (Lopez)* (1981) 116 Cal.App.3d 456, 459.) "The purpose of a probation report [or a psychological assessment] is to assist the sentencing court in determining an appropriate disposition. [Citation.] The court has the unquestioned discretion to reject it in part or in toto. [Citation.]" (*Ibid*., citing *People v. Warner* (1978) 20 Cal.3d 678, 683.) Hence, contrary to minor's claim, because the juvenile court considered all of the appropriate factors before it committed minor to CYA, a psychiatric evaluation of minor would not have been of "immeasurable help" to the juvenile court in determining an appropriate disposition for minor.

III

DISPOSITION

The judgment is affirmed.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

McKINSTER
J.